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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/597,746

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Joshua Dick

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EXAMINER

BLAN, NICOLE R

ART UNIT

PAPER NUMBER

1714

MAIL DATE

DELIVERY MODE

04/15/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/597,746	Applicant(s) DICK ET AL.	
	Examiner NICOLE BLAN	Art Unit 1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 5-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 5-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>09282010</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 28, 2010 has been entered.

Response to Arguments

2. Applicant's arguments, filed September 28, 2010, with respect to the rejection(s) of claim(s) 1, 2 and 5-8 under 35 U.S.C. 102(b) have been fully considered and are persuasive for the reason that the claim limitations as amended prevent the use of liquid for purging the cleaning material, but Brackett uses water in its cleaning step. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made. Please refer to the detailed discussion below.

3. The other arguments presented on September 28, 2010 have been fully considered but they are not persuasive.

In response to applicant's argument regarding Gabby, the examiner does not find it persuasive. Instant claims 9-13 are drawn to the product and **not** to the method of using the product. See *In re Fitzgerald* (205 USPQ 594). (CAFC) or *In re Spada* 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990) and MPEP 2112.01 [R3]. Gabby teaches a tablet made

Art Unit: 1714

from a food-safe coarse material as well as a binding agent which is the exact product instantly claimed. Therefore, the limitations of the claims are met.

In response to applicant's argument regarding Kramer, the examiner does not find it persuasive. Instant claims 15-20 are drawn to the apparatus **not** to the method of using the product. Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). Kramer teaches a tablet press such that the two portions have complementary shapes in order to form a tablet upon application of a predetermined force. Therefore, the claimed limitations are met.

Claim Objections

4. Claim 2 is objected to because of the following informalities: it contains duplicate materials, namely l) legume and m) nut are repeats of previously listed a) legumes and e) nuts. Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 1714

6. Claims 9, 10, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Gabby et al. (U.S. Patent 4,328,217, hereinafter '217).

Claims 9, 10, 12 and 13: '217 teaches a tablet comprising bran, which is preferred as wheat [reads on "a food safe material" and claims 12-13; col. 2, lines 63-67], and a binding agent [col. 2, lines 21-25]. Note that the tablet possesses a color [reads on claim 10].

The product is identical to the one claimed; therefore, the product of '217 can be purged without the use of liquid. Furthermore, claims 9-13 are drawn to the product and **not** to the method of using the product. Therefore, all the limitations of the claims are met.

7. Claims 15-17 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kramer (U.S. Patent 5,462,427, hereinafter '427).

Claims 15-17 and 20: '427 teaches a tablet press comprising a mold having a first portion having a pre-determined size; a second portion complementary to the first determined size and shape [Fig. 1]; and a pressing machine [(10), Fig. 1] for pressing the first and second halves of the mold together at a predetermined force.

Since all the structures are found in the prior art, it is fully capable of performing the functions as recited in claims 16-17 and 20. The tablet press of '427 is fully capable of pressing the first and second halves of the mold together at a predetermined force for combining food-safe materials into an object corresponding to the size and shape for most common type of product that the grinding machine is capable of grinding (tablet can be grinded by the grinding machine); and the pressed object made by the tablet press of '427 is also fully capable of being purged through the grinding machine without the use of liquid. Applicants' attention is drawn to the fact

Art Unit: 1714

that claims 15-20 are drawn to the apparatus **not** to the method of using the product. Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). “[A]pparatus claims cover what a device is, not what a device does.” Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 1 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Tea & Coffee Trade Journal (hereinafter Levin) in view of Ford et al. (U.S. Patent 5,865,383, hereinafter ‘383).

Claims 1 and 5-7: Levin teaches one can clean their coffee grinder after grinding strong flavored coffees by grinding a non-descript regular coffee [reads on claim 5 “shape and size of

Art Unit: 1714

most common type of product that the machine grinds” and claim 6 “shaped like a coffee bean” and claim 7 “the cleaning material is colored”; page 17]. Levin implicitly teaches cleaning a grinding machine having one or soiled burrs [because it grinds the coffee] by apportioning a predetermined amount of non-descript regular coffee to be inserted into the grinding machine to be ground in order to remove the stronger flavored coffee residues. Levin does not explicitly teach purging the ground cleaning material and soil from the grinder, but it is notoriously well known in the art of grinding coffee that one must remove the ground product from the machine as taught by ‘383 [Fig. 1 and 2; col. 5, lines 38-40]. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to purge the ground cleaning material as taught by ‘383 in the method of Levin because ‘383 discloses that ground coffee exits the machine (reads on “purging”).

11. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Tea & Coffee Trade Journal (hereinafter Levin) in view of Ford et al. (U.S. Patent 5,865,383, hereinafter ‘383), and further in view of Mrs. Fixit (hereinafter McGraw).

Claim 2: Levin teaches the limitations of claim 1 above. It does not teach that the cleaning material comprises a material from the list in claim 2. However, McGraw teaches that coffee grinders can be cleaned using rice [page 23]. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use rice as taught by McGraw to clean the coffee grinder of Levin because McGraw teaches rice is sufficient at cleaning coffee grinders.

Art Unit: 1714

12. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Tea & Coffee Trade Journal (hereinafter Levin) in view of Ford et al. (U.S. Patent 5,865,383, hereinafter '383), and further in view of Hollander (U.S. PGPub 2005/0026798, hereinafter '798).

Claim 8: Levin teaches the limitations of claim 5 above. It is not taught that the cleaning material comprises a binding material. However, '798 teaches a method of cleaning a grinding machine by using a pre-pressed tablet formed from biodegradable components to clean a grinder and that tablet forms of cleaning agents include binders [page 1, paragraph 5; page 3, paragraph 27]. It would have been obvious to one of ordinary skill in the art to use a binder with additional ingredients in order to form a pressed tablet as taught by '798 in order to clean the grinder of Levin because '798 illustrates a tablet is effective at cleaning grinders.

13. Claims 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takada et al. (U.S. PGPub 2002/0183261, hereinafter '261) in view of Hollander (U.S. PGPub 2005/0026798, hereinafter '798).

Claims 9 and 14: '261 teaches a tablet comprising egg shell [read as inorganic food safe coarse materials; paragraph 14]. '261 remains silent about a binding material. However, '798 teaches a pre-pressed tablet formed from food-safe components to clean a grinder and that tablet forms of cleaning agents include binders [page 1, paragraph 5; page 3, paragraph 27]. It would have been obvious to one of ordinary skill in the art to use a binder with additional ingredients in order to form a pressed tablet as taught by '798 in order to form a tablet because '798 illustrates binders effectively form a tablet.

Art Unit: 1714

14. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gabby et al. (U.S. Patent 4,328,217, hereinafter '217).

Claim 11: '217 teaches the limitations of claim 9 above. '217 teaches a tablet, but it does not explicitly teach that the table is sized and shaped like a coffee bean. However, it would have been an obvious matter of design choice to shape the tablet in a particular shaped based on its application, since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordianry skill in the art.

15. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer (U.S. Patent 5,462,427, hereinafter '427).

Claims 18 and 19: '427 teaches forming a tablet by pressing the first and second halves of the mold together at a predetermined force, but it does not explicitly teach that the first and second portions of the mold are sized and shaped like a coffee bean. However, it would have been an obvious matter of design choice to shape the tablet in a particular shaped based on its application, since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordianry skill in the art.

Art Unit: 1714

Conclusion

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NICOLE BLAN whose telephone number is (571)270-1838. The examiner can normally be reached on Monday - Thursday 8-5 and alternating Fridays 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Kornakov can be reached on 571-272-1303. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicole Blan/

Examiner, Art Unit 1714

/Michael Kornakov/

Supervisory Patent Examiner, Art Unit 1714